Oklahoma Law Review

Volume 36 | Number 1

1-1-1983

Recent Developments

RECENT DEVELOPMENTS

COLLEGES: Jurisdiction of the Department of Health, Education and Welfare

A private college that does not otherwise receive financial assistance from the federal government, but whose students receive loans and/or grants from that government, is not subject to regulation under Title IX of the 1972 Education Amendment except with respect to its handling of such loans or grants. So ruled *Hillsdale College v. Department of Health, Education & Welfare.*[1] The majority asserts that in enacting this amendment, Congress did not intend HEW to have pervasive power to regulate the whole college operation simply because it might benefit institutionally from the proceeds of those loans and grants. It therefore disagreed with *Grove City College v. Bell,*[2] decided only a few months previously. Looking at section 901(a) of the amendment, which specifies that "no person in the United States shall, on the basis of sex, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any education program or activity receiving federal financial assistance," and since Hillsdale practiced no sex discrimination with respect to its administration of loans and grants, the court relied on *North Haven Board of Education v. Bell,*[3] in which the Supreme Court adopted the view that Title IX dealt with individual "programs" and not total institutional operations. The court therefore denied HEW's assertion that the College must furnish assurance of compliance with Title IX in all areas as a condition to receiving student loans and grants.

CRIMINAL LAW: Competency of Radar Results as Evidence

On two previous occasions, *Cantrell v. State*[1] and *Thompson v. State,*[2] the Oklahoma Court of Criminal Appeals declined to resolve the issue of the competency of radar results. In *Cantrell* the court held that the competency of the radar results was not at issue because it was not necessary to prove that the defendant was actually speeding but only that the officer was justified in pursuing and stopping the defendant. In *Thompson,* since the defendant had not objected to the introduction of the radar results at trial but rather had brought the issue up for the first time on appeal, the court held that

1. 696 F.2d 418 (6th Cir. 1982), one judge dissenting.
2. 687 F.2d 684 (3d Cir. 1982).
3. 102 S.Ct. 1912 (1982).

1. Cantrell v. State, 561 P.2d 973 (Okla. Cr. App. 1977).
2. Thompson v. State, 453 P.2d 314 (Okla. Cr. App. 1969).

the defendant had waived any objection he might have. However, in *Shears v. State*,[3] a case of first impression, the court squarely faced the issue.

Defendant was stopped for speeding after the radar device in the arresting officer's patrol unit registered his vehicle at a speed of 67 miles per hour. At trial the officer testified that before stopping defendant he had performed two accuracy tests of the radar device. One was conducted with a calibrated tuning fork, the other by way of an internal calibration unit. Both tests indicated that the device was functioning accurately. The officer also testified that he had received both classroom and field training in the operation of radar devices. The defendant was convicted, but argued on appeal that the officer's testimony as to the radar results was incompetent because the testing devices used to verify the accuracy of the radar unit (tuning fork and internal unit) had not been proven accurate.

The court noted that a survey of cases that have considered the issue indicated that there are three basic prerequisites to a conviction of speeding based on radar results:

1. the scientific reliability of the radar speedmeter as a recorder of speed;
2. the accuracy of the particular speedmeter used in a given case;
3. the proper operation of the radar equipment.[4]

As to the first prerequisite, the court stated that judicial notice may be taken of the scientific reliability of radar.[5] Concerning the second prerequisite, the one at which defendant's argument was directed, the court noted that both tuning forks and internal calibration devices are acceptable means of establishing the accuracy of a particular radar unit.[6] The court observed that a requirement that the particular testing devices need be proved accurate would lead to a chain of evidence that might proceed *ad infinitum*.[7] As an officer need not be an expert in the science or theory underlying the function of radar devices,[8] the court believed the third prerequisite satisfied by the evidence of the officer's training in the operation of radar speedmeters. Upon the basis of these guidelines, the court found the radar results competent and affirmed the conviction.

FAMILY LAW: Noncustodial Parent May Discharge Child Support Obligation in Nonmonetary Form

The Uniform Adoption Act[1] allows a legitimate child to be adopted without

3. Shears v. State, 648 P.2d 841 (Okla. Cr. App. 1982).

4. Goger, *Proof, By Radar or Other Mechanical or Electronic Devices, of Violation of Speed Regulations*, 47 A.L.R.3d 822 (1973).

5. Everight v. City of Little Rock, 230 Ark. 695, 326 S.W.2d 796 (1959); State v. Graham, 322 S.W.2d 188 (Mo. Ct. App. 1959).

6. State v. Primm, 4 Kan. App. 2d 314, 606 P.2d 112 (1980).

7. State v. Snyder, 184 Neb. 465, 168 N.W.2d 530 (1969).

8. State v. Primm, 4 Kan. App. 2d 314, 606 P.2d 112 (1980).

1. 10 OKLA. STAT. §§ 60.1-60.23 (1981).

the consent of a natural father or mother who has willfully failed to contribute to the child's support for a period of one year preceding the filing of the petition for adoption.[2] In *In re Adoption of C.M.G.*,[3] the Oklahoma Supreme Court had the opportunity to clarify what acts on the part of the natural parent will qualify as support under section 60.6(3) of Title 10 of the Oklahoma Statutes (1981). In this case, the custodians of the child sought to adopt the child without the natural mother's consent based on the mother's alleged failure to provide for the child's support. The natural mother's attempt to admit evidence of her contributions in the form of food, gifts, and clothing was denied by the trial court based on the court's belief that only monetary payments could constitute support under section 60.6(3). In a case of first impression, the Oklahoma Supreme Court reversed the trial court's ruling and held that a parent may discharge his unadjudicated support duty by a contribution *in any form* toward the child's living expenses according to the parent's ability.[4]

Justice Opala's decision made a clear distinction between child support obligations imposed upon the noncustodial parent by judicial decree, such as a child support order in a divorce decree, and the duty in law of a natural parent to provide for a child's "necessaries." The court previously had ruled that nonmonetary contributions would not constitute support under a judicially imposed support obligation. However, an unadjudicated support duty was deemed comparable to the parent's common law liability for "necessaries"[5] which could be satisfied by any provision of necessary food, clothing, or shelter for the child.

In re Adoption of C.M.G. illustrates the court's recognition of the fundamental importance of the parent-child relationship and the court's narrow construction of any statutes that seek to interfere with that relationship. The Oklahoma Supreme Court had recently raised the level of proof required to support an order declaring a child eligible for adoption without parental consent from a weight of the evidence standard to a requirement that the proof be clear and convincing.[6] The court had also declared that a support payment made shortly before an adoption petition was filed was enough to bar an adoption proceeding under section 60.6(3), even though it was the first such payment in 21 months and was made for the express purpose of interrupting the one-year nonsupport period.[7] *In re Adoption of C.M.G.* continues the clear and convincing evidence standard as well as further evincing the court's willingness to construe the statute in favor of the natural parents and against

2. 10 OKLA. STAT. § 60.6(3) (1981).

3. 53 OKLA. B.J. 3007 (Dec. 25, 1982).

4. *See id.* at 3009 n.2, where the court states that "living expenses" include food, shelter, clothing, and medical care.

5. This common law liability has been codified in 10 OKLA. STAT. § 13 (1981): "If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the parent."

6. *In re* Adoption of Darren Todd H., 637 P.2d 66 (Okla. 1981).

7. Mann v. Garrette, 556 P.2d 1003 (Okla. 1976).

the parties seeking to adopt the child without the natural parent's consent. This trend will likely continue as the court tries to safeguard the almost sacred parent-child relationship from unwarranted interference.[8] As the court stated: "Termination of a right so fundamental as that of a parent to his natural child calls for an application of the 'full panoply of procedural safeguards'."[9] By expanding the term "support" to mean contribution in any form, the court has established yet another safeguard.

INSURANCE: Good-faith Purchaser of a Stolen Automobile Has an Insurance Interest

In *Snethen v. Oklahoma State Union of the Farmers Educational & Cooperative Union of America*,[1] the Supeme Court of Oklahoma decided an issue that has split courts throughout the country and that also reverses one of its earlier decisions.[2]

In the prior case the court had ruled that a good-faith purchaser of a stolen automobile did not have an insurable interest that would enable him to recover under a policy he had taken out on the vehicle. Now, reexamining that decision, the court overrules that case and finds that under 26 Okla. Stat. § 3605 (1981), all the statutory criteria for finding an insurable interest are met. In taking this position, the court refers to the "factual expectation" theory of insurable interest, viz., that one has an insurable interest "if he stands in some relation to, or has concern in, the insured property which may be prejudiced by the happening of the events insured against . . . if so circumstanced with respect to the insured subject-matter as to make him interested in its preservation."[3] Since the good-faith buyer of a stolen vehicle has at least a possessory title "good against all the world except the true owner"[4] and has given a valuable consideration for it, he thus has an "actual, lawful, and substantial economic interest" that he may legitimately protect.[5] Thus, with such an interest here, it cannot be said that the court rested its decision solely on a factual expectation test. The court states that its new pronouncement shall be given effect in the instant case, as well as prospectively to insurance losses occurring after the issuance of its mandate.

8. The Oklahoma Court of Appeals has stated that "the rights of a natural parent are to be regarded with a reverence bordering on sacredness and are not to be judicially revoked on whim, suspicion, or equivocal or insubstantial evidence." *In re* Adoption of Goodson, 585 P.2d 1130, 1133 (Okla. App. 1978).

9. 53 OKLA. B.J. 3007, 3008 (Dec. 25, 1982).

1. 54 OKLA. B.J. 441 (1983).

2. Ernie Miller Pontiac v. Home Ins. Co., 534 P.2d 1 (Okla. 1975).

3. Snethen v. Oklahoma State Union of the Farmer's Educ. & Coop. Union of America, 54 OKLA. B.J. 441, 442 (1983).

4. *Id.* at 443.

5. *Id.*